

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
ABERDEEN DIVISION**

CHIQUITA RENA ORR

PLAINTIFF

V.

CIVIL ACTION NO. 1:20CV51-RP

COMMISSIONER OF SOCIAL SECURITY

DEFENDANT

ORDER DISMISSING CASE

Plaintiff filed her Complaint on March 26, 2020. Docket 1. On November 19, 2020, plaintiff's counsel filed a motion to withdraw and advised that plaintiff died in July 2020. Docket 20. Because plaintiff's counsel could not properly serve the decedent with the motion to withdraw, the court was unable to grant the motion. Docket 21. The court construed the motion to withdraw containing notice of the passing of Ms. Orr as the Suggestion of Death for purposes of Federal Rule of Civil Procedure 25. Further, the court directed that "if a motion for substitution of the proper party is not made within 90 days of the motion to withdraw, this action must be dismissed. Fed. R. Civ. P. 25(a)(1)." Docket 21.

Federal Rule of Civil Procedure 25 dictates that:

If a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed.

Considering November 19, 2020 as the date of the statement noting the death, 90 days expired on February 18, 2021 with no motion to substitute having been filed. As such, the plaintiff's claims are hereby DISMISSED without prejudice and this case is CLOSED.

Plaintiff's counsel's Amended Motion to Withdraw as Attorney of Record (Docket 23) is DENIED AS MOOT.

THIS, the 23rd day of February, 2021.

/s/ Roy Percy
UNITED STATES MAGISTRATE JUDGE